

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DANIEL S. HAWRANEK,

Plaintiff,

v.

No. 19-cv-1112 CG/SMV

**LAW OFFICE OF THE PUBLIC DEFENDER and
AFSME COUNCIL 18,**

Defendants.

**MEMORANDUM OPINION AND ORDER
GRANTING APPLICATION TO PROCEED *IN FORMA PAUPERIS***

THIS MATTER is before the Court on Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form), [Doc. 4], filed November 27, 2019.

Application to Proceed in forma pauperis

The statute for proceeding *in forma pauperis*, 28 U.S.C. § 1915(a) (2018), provides that the Court may authorize the commencement of any suit without prepayment of fees by a person who submits an affidavit that includes a statement of all assets the person possesses and that the person is unable to pay such fees.

When a district court receives an application for leave to proceed in forma pauperis, it should examine the papers and determine if the requirements of 28 U.S.C. § 1915(a) are satisfied. If they are, leave should be granted. Thereafter, if the court finds that the allegations of poverty are untrue or that the action is frivolous or malicious, it may dismiss the case.

Menefee v. Werholtz, 368 F. App'x 879, 884 (10th Cir. 2010) (quoting *Ragan v. Cox*, 305 F.2d 58, 60 (10th Cir. 1962)). “The statute [allowing a litigant to proceed *in forma pauperis*] was intended for the benefit of those too poor to pay or give security for costs” *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 344 (1948). While a litigant need not be “absolutely destitute[,] an

affidavit is sufficient which states that one cannot because of his poverty pay or give security for the costs and still be able to provide himself and dependents with the necessities of life.” *Id.* at 339 (internal quotation marks and ellipsis omitted).

The Court grants Plaintiff’s Application to Proceed in District Court Without Prepaying Fees or Costs [Doc. 4]. Plaintiff signed an affidavit stating he is unable to pay the costs of these proceedings and provided the following information: (i) Plaintiff’s expected income next month is \$0.00; (ii) Plaintiff was employed until July 10, 2019; (iii) Plaintiff opened a law firm in August 2019 “but it was not truly established until November 2019;” (iv) Plaintiff is “currently insolvent;” and (v) Plaintiff’s monthly expenses total \$3,538.00. *Id.* The Court finds that Plaintiff is unable to pay the costs of this proceeding because he expects no income next month and he is currently insolvent.

Service

Plaintiff is proceeding *in forma pauperis* pursuant to § 1915, which provides that the “officers of the court shall issue and serve all process, and perform all duties in [proceedings *in forma pauperis*]”). § 1915(d).

IT IS ORDERED that:

- (i) Plaintiff’s Application to Proceed in District Court without Prepaying Fees or Costs [Doc. 4], filed November 27, 2019, be **GRANTED**.
- (ii) The Clerk of the Court must serve a summons, a copy of the Complaint [Doc. 1], and a copy of this Order on Defendant Law Office of the Public Defender pursuant to Fed. R. Civ. P. 4(j)(2). The Clerk must also mail a copy of the summons, a copy of the Complaint [Doc. 1], and a copy of this Order to:

Law Office of the Public Defender
505 S. Main Street, Suite 121
Las Cruces, New Mexico 88001

- (iii) The Clerk of the Court must notify Defendant AFSME Council 18 that an action has been commenced against it and request that Defendant AFSME Council 18 waive service pursuant to Fed. R. Civ. P. 4(d)(1). The notice must include a copy of Plaintiff's Complaint [Doc. 1]. The Clerk must mail the notice, waiver, a copy of the Complaint, and a copy of this Order to:

AFSME Council 18
1202 Pennsylvania St. NE
Albuquerque, New Mexico 87110

IT IS FURTHER ORDERED that if Defendant AFSME Council 18 does not return the waiver within 45 days after the request is sent, then Plaintiff must file a motion requesting that the United States Marshal serve a copy of the Summons and Complaint on Defendant AFSME Council 18.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge